



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2018-0223; FRL-9980-48-Region 9]

Air Plan Approval; California; Eastern Kern Air Pollution Control District;

Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, the Environmental Protection Agency (EPA) is granting a request by the State of California to reclassify the Eastern Kern County (“Eastern Kern”) nonattainment area from “Moderate” to “Serious” for the 2008 ozone national ambient air quality standards (NAAQS). In connection with the reclassification, the EPA is establishing a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Eastern Kern portion of the California State Implementation Plan (SIP) to meet certain additional requirements for Serious ozone nonattainment areas. The EPA has already received SIP revision submittals addressing most of the additional SIP requirements.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0223. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through

<http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972-3848, *levin.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On May 14, 2018 (83 FR 22235), the EPA proposed to grant a request by the State of California to reclassify the Eastern Kern nonattainment area from Moderate to Serious for the 2008 ozone NAAQS. Our May 14, 2018 proposed rule provides: background information concerning the Clean Air Act (CAA); the EPA’s promulgation of the NAAQS; SIPs to implement, maintain, and enforce the NAAQS within each state; ozone and its precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)); the 2008 ozone NAAQS; area designations, classifications and reclassifications for the 2008 ozone NAAQS; and SIP revisions required to address CAA ozone nonattainment area plan requirements based on classification.

Our proposed rule also describes the California Air Resources Board's (CARB) request for reclassification of the Eastern Kern 2008 ozone nonattainment area from Moderate to Serious, our evaluation of the request, and the basis for our proposed approval of the request. Lastly, our proposed rule describes the SIP revisions that CARB has already submitted to the EPA for the Eastern Kern ozone nonattainment area and finds that all the SIP elements that apply to Eastern Kern as a Serious ozone nonattainment area for the 2008 ozone NAAQS have been addressed except for new source review (NSR) and reasonably available control technology (RACT) for major sources of NO_x. Today, we are taking final action to grant CARB's reclassification request for the Eastern Kern ozone nonattainment area and to establish a 12-month deadline (from the effective date of this final rule) for submittal of the two remaining SIP elements for this area. Please see our May 14, 2018 proposed rule for further detail concerning these topics.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received four comments that were submitted anonymously. The commenters raised issues that are outside of the scope of this rulemaking, including foreign policy, wildfire suppression, dams, wind turbines, air quality in China and India, water quality in China, and climate change. The comment letters are available in the docket for this rulemaking.

III. EPA Action

Pursuant to CAA section 181(b)(3) and 40 CFR 51.1103(b), the EPA is granting a request by the State of California to reclassify the Eastern Kern nonattainment area from Moderate to

Serious for the 2008 ozone NAAQS. In connection with the reclassification, the EPA is establishing a deadline of no later than 12 months from the effective date of reclassification for submittal of the two remaining SIP elements (*i.e.*, NSR and RACT for major sources of NO_x) for Serious ozone nonattainment areas that have not already been submitted for the Eastern Kern ozone nonattainment area.¹

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this final action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. Voluntary reclassifications under section 181(b)(3) of the CAA are based solely upon requests by the state, and the EPA is required under the CAA to grant them. This final action does not, in and of itself, impose any new requirements on any sector of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, reclassification does not impose a materially adverse impact under Executive Order 12866. For these reasons, this final action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). Furthermore, this final action is not

¹ Upon the effective date of reclassification, we note that certain regulatory changes would occur automatically and do not require a SIP revision. For example, upon reclassification from Moderate to Serious, the applicability (or “de minimis”) thresholds under our General Conformity rule (*see* 40 CFR part 93) would drop from 100 tons per year to 50 tons per year for VOC or NO_x. *See* 40 CFR 93.153(b)(1). Under the General Conformity rule, federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require Federal permits, approvals, or funding.

an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because actions such as reclassifications made at the request of a state are exempt under Executive Order 12866.

In addition, I certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” There are no Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Eastern Kern ozone nonattainment area, and thus, this final rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

This final action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This final rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

Reclassification actions do not involve technical standards and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs policies, and activities on minority populations and low-income populations in the United States. This final reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

June 26, 2018.

Dated:

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81 – DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C – Section 107 Attainment Status Designations

2. Section 81.305 is amended in the table for “California-2008 8-Hour Ozone NAAQS (Primary and secondary)” by revising the entry for “Kern County (Eastern Kern), CA” to read as follows:

§81.305 California

* * * * *

California--2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated Area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * *	*	*	*	*
Kern County (Eastern Kern), CA: ² Kern County (part): That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the		Nonattainment	[Insert date 30 days after date of publication in the <u>Federal Register</u>]	Serious

<p>range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28</p>				
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South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
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¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

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